

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 EASTERN DISTRICT OF PENNSYLVANIA

4 WILLIAM J. GALLAGHER, )

5 Plaintiff )

6 v. )

7 NCO FINANCIAL SYSTEMS, INC., )

8 Defendant )

Case No.:

COMPLAINT AND DEMAND FOR  
JURY TRIAL

(Unlawful Debt Collection Practices)

9  
10 COMPLAINT

11 WILLIAM J. GALLAGHER ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN,  
12 P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

13  
14 INTRODUCTION

15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15  
16 U.S.C. § 1692 *et seq.* ("FDCPA").

17  
18 JURISDICTION AND VENUE

19 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
20 that such actions may be brought and heard before "any appropriate United States district court  
21 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original  
22 jurisdiction of all civil actions arising under the laws of the United States.

23 3. Defendant conducts business and has an office in the State of Pennsylvania and  
24 therefore, personal jurisdiction is established.  
25

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

3  
4 **PARTIES**

5 6. Plaintiff is a natural person residing in Easton, Pennsylvania, 18045.

6 7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C.  
7 §1692K(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).

8 8. Defendant is a national debt collection company with corporate headquarters  
9 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

10 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
11 and repeatedly contacted Plaintiff in an attempt to collect a debt.

12 10. Defendant acted through its agents, employees, officers, members, directors,  
13 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

14  
15 **PRELIMINARY STATEMENT**

16 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
17 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
18 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
19 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
20 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
21 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
22 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
23 unconscionable conduct, both generally and in a specific list of disapproved practices.  
24  
25

1           12. In particular, the FDCPA broadly enumerates several practices considered  
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
6 collector may not use any false, deceptive, or misleading representation or means in connection  
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
12 connection with the collection of a debt.  
13

14           13. In enacting the FDCPA, the United States Congress found that “[t]here is  
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
18 additionally found existing laws and procedures for redressing debt collection injuries to be  
19 inadequate to protect consumers. 15 U.S.C. § 1692b.  
20

21           14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
24 collection practices are not competitively disadvantaged, and to promote consistent State action  
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

**FACTUAL ALLEGATIONS**

15. Defendant and others it retained began in January of 2010 and continued until March of 2010 to constantly place harassing and abusive collection calls to Plaintiff, seeking and demanding payment for an alleged consumer debt of another person.

16. Upon information and belief, the alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.

17. Defendant and its employees, specifically "Janet Lattimer" harassed Plaintiff by making continuous calls and leaving voice messages on his home telephone number. Plaintiff's call log is attached hereto as Exhibit "A".

18. Defendant placed repeated calls to Plaintiff's home telephone almost every day, causing Plaintiff to receive, at times, more than two (2) collection calls a day.

19. Defendant placed repeated calls to Plaintiff's home telephone almost every day, causing Plaintiff to receive, at times, more than ten (10) collection calls a week and at times, more than twenty (20) collection calls a month.

20. Defendant identified the debtor as Plaintiff's daughter-in-law's mother.

21. Defendant and others it retained repeatedly contacted Plaintiff for at least twelve (12) weeks in its attempts to collect a debt.

22. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of privacy.

23. Defendant failed to investigate or verify contact information prior to and after calling Plaintiff.

24. Defendant failed to update its records to avoid further harassment of Plaintiff.

**CONSTRUCTION OF APPLICABLE LAW**

25. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

26. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

27. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it

1 ensures protection of all consumers, even naive and trusting, against deceptive collection  
2 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
3 collection notices. Clomon, 988 F. 2d at 1318.

4  
5 **COUNT I**  
6 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**  
7

8 28. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
9 more of the following ways:

- 10 a. Defendant violated of the FDCPA generally;
- 11 b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff of  
12 another person's debt;
- 13 c. Defendant violated § 1692b(3) of the FDCPA by calling Plaintiff more than  
14 once in connection for the collection of a debt for another individual;
- 15 d. Defendant violated § 1692c(b) of the FDCPA by communicating with  
16 Plaintiff about a debt allegedly owed by another person;
- 17 e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in  
18 connection with the collection of an alleged debt;
- 19 f. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's  
20 telephone to ring repeatedly or continuously with the intent to harass, annoy  
21 or abuse Plaintiff;
- 22 g. Defendant violated § 1692e(5) of the FDCPA by threatening to take action  
23 that cannot legally be taken or that is not intended to be taken;
- 24 h. Defendant violated § 1692f of the FDCPA by using unfair and  
25

unconscionable means with Plaintiff to collect or attempt to collect a debt;

- i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, WILLIAM J. GALLAGHER, respectfully pray for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for each violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, WILLIAM J. GALLAGHER, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

DATED: 1-14-11

BY: \_\_\_\_\_

Craig Thor Kimmel  
Attorney ID # 57100  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Fax: 877-788-2864  
Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)

3-9	NCO		11:29 AM
3-10	NCO		7:50 PM
3-12	ASSET CARE		10:59 AM
3-15	NCO		9:33 AM
3-16	NCO		12:07 PM
3-18	NCO	866-429-3592	2:43 PM
3-19	NCO	866-429-3592	11:32 AM
3-22	ASSET CARE	866-429-3591	2:19 PM
3-24	ASSET CARE	866-429-3591	3:29 PM
3-26	NCO	866-429-3592	12:35 PM
3-29	ASSET CARE	866-429-3591	1:01 PM
3-30	NCO-ANSWERED ASSET CARE	866-429-3592	12:05 PM

